IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 762 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

RAJESHBHAI R MISTRY

Appearance:
Ms. Ami Yagnik, A.P.P. for the State
Mr. K.B.Anadjiwala for Mr.M.M.Tirmizi, advocate for the respondents

---

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 22/04/99

ORAL JUDGEMENT

(Per : Panchal, J.)

The acquittal of the respondents recorded by the learned Additional Sessions Judge, Vadodara, in Sessions

Case No. 54/91 vide judgment and order dated April 16, 1992, of the offences punishable under sections 498(A), 306 read with section 114 of the Indian Penal Code, is under challenge in present appeal which is filed by the State of Gujarat under section 378 of the Code of Criminal Procedure, 1973.

2. Deceased Jayshreeben was daughter of Mansukhlal Gordhandas, who was residing at Vrajlal Bhavsar ni Chawl, Gopalnagar, Amraiwadi, Ahmedabad. Mansukhlal is carpenter by profession. Deceased Jayshreeben was married to respondent no.1 in the year 1989. According to Mansukhlal, respondent no.1 was beating deceased Jayshreeben and her marital life was not happy. Once deceased Jayshreeben was beaten by respondent no.1 and, therefore, she had gone to the house of Nanalal, who is brother-in-law of Mansukhlal. According to Mansukhlal, Nanalal had persuaded Jayshreeben to return to her matrimonial house, but when Jayshreeben had gone to the house of respondent no.1, in presence of Nanalal, deceased Jayshree was beaten and was not permitted to enter the house by respondent no.1, as a result of which, Nanalal and his wife Vimalaben had brought Jayshreeben to Ahmedabad at the house of Mansukhlal. Thereafter Babulal who is residing at Bombay and who is brother-in-law of Mansukhlal had come and he had persuaded deceased Jayshreeben to return to her matrimonial home and accordingly, she was residing with the respondents. On May 18, 1989, deceased Jayshreeben poured kerosene over her body as well as her son aged about 8 to 9 months and set herself as well as her minor son ablaze. On receiving burn injuries, deceased started screaming and, therefore, one Vithaldas Dhulabhai Parmar, who is residing near the house of the respondents, came to her rescue and removed her to hospital in a rickshaw. Deceased Jayshree was admitted in emergency ward of S.S.C.Hospital, Vadodara at about 12.30 P.M. on May 18, 1989 and was treated by Dr. Meenaben Maheshkumar Parekh. The doctor found that deceased Jayshreeben had sustained 100% burn injuries. It is alleged that during treatment Jayshreeben made oral dying declaration before Dr. Meenaben stating that she had attempted to commit suicide because of cruelty meted out to her by her father-in-law. During the treatment, deceased Jayshreeben was referred to Burns Ward where she expired at about 1.20 P.M. The declaration made by deceased Jayshreeben to Dr. Meenaben was conveyed to Lakhabhai Vechatbhai, who was discharging duties as head constable at S.S.G. Hospital. Lakhabhai Vechatbhai noted down the information and informed the Officer incharge of Sayajiganj Police Station on phone about the incident. Mr. S.J.Atit, who was then

discharging duties as Superintendent of Police, "D" Division,on receipt of information from Head Constable Lakhabhai directed P.S.I. Mr.Bhatiya of Sayajiganj Police Station to investigate the case and Entry No. 48/89 was made in the register maintained at the police station regarding accidental death of deceased Jayshreeben. Mr. Atit, who was S.P. " D" Division, Vadodara. went to S.S.G. Hospital and wrote a yadi to Executive Magistrate for holding inquest on the dead body. Accordingly, inquest panchnama was prepared in presence of panch witnesses. Thereafter panchnama of place of incident was prepared, where-from unposted postcard alleged to have been written by the deceased was recovered. The investigating officer recorded statements of witnesses who were found to be conversant with the facts of the case and the dead body was sent for postmortem examination which was carried out by Dr. Sutuppa Satyendra. The incriminating articles, which were seized during the course of investigation, including vicera of the deceased were sent to Forensic Science Laboratory for analysis. On receipt of necessary reports and at the conclusion of investigation, the respondents were chargesheeted for the offences punishable under sectins 498(A), 306 read with section 114 of the Indian Penal Code. The offence punishable under section 306 of I.P.C. is exclusively triable by the Court of Sessions and, therefore, the case was committed to Sessions Court, Vadodara for trial, where it was numbered as Sessions Case No. 54/91. The learned Additional Sessions Judge, Vadodara to whom the case was made over for trial, framed charge against the respondents at Exh.1 for the offences punishable under sections 498(A), 306 read with section 114 of I.P.C. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. Therefore, prosecution examined; (1) Dr. Sutuppa Satyendra, PW 1 Exh.8, (2) Dr. Meenaben Maheshbhai Parekh, PW 3, Exh.11, (3) Vithalbhai Dhulabhai Parmar, PW 3, Exh.15, (4) Shanabhai Mathurbhai Vasava, PW.4 Exh.19, (5) Mansukhlal Gordhandas PW.5, Exh.20, (6) Lakhabhai Vechatbhai, PW.6, Exh.21, and (7) Shivgiri Jagatgiri Atit, PW.7, Exh.28, to prove its case against the respondents. The prosecution also produced documentary evidence, such as, postmortem notes of deceased Jayshreeben at Exh.9, postmortem notes of deceased Gaurav Rajeshbhai Mistry at Exh.10, medical certificate of deceased Jayshreeben at Exh.12, medical certificate of Gaurav- son of deceased Jayshreeben at Exh.13, inquest report at Exh.16, panchnama of place of offence at Exh.17, entry made in vardhy book at Exh.23, complaint at Exh.26, postcard at Exh.30 etc., to bring home guilt to the respondents. After recording of

evidence of prosecution witnesses was over, the learned Judge questioned the respondents generally on the case and recorded their statement under section 313 of the Code of Criminal Procedure, 1973. In their further statements, the respondents denied the case of prosecution. The respondent no.1 in his further statement mentioned that deceased Jayshreeben after delivery of Gaurav was ailing and suffering from epilepsy, as a result of which, she had once thrown her son Gaurav on ground and was also throwing household utensils. The respondent no.1 stated before Court that as the deceased was suffering from epilepsy, she might have committed suicide. He produced medical bills and prescription to indicate that the deceased was ailing since long and was being treated for her ailment. No evidence in defence was led by any of the respondents.

3. On appreciation of evidence led by the prosecution, the learned Judge held that as per medical papers at 12.30 P.M. the deceased was not in a position to speak and, therefore, it was not possible for the deceased to make any declaration before anyone, as a result of which, so-called dying declaration was not believable. The learned Judge deduced that no satisfactory evidence was led by the prosecution to establish that the respondents were guilty of any willful conduct which was of such a nature as was likely to drive the deceased with her son of tender age to commit suicide nor was there any evidence to establish that the respondents had abetted commission of suicide by deceased Jayshreeben and, therefore, offences punishable under sections 498-A and 306 I.P.C. were not made out against the respondents. In ultimate decision, learned Judge acquitted the respondents by the impugned judgment dated April 16, 1992, giving rise to present appeal.

4. Ms. Ami Yagnik, learned Counsel for the appellant submitted that evidence of Mansukhlal Gordhandas, who was father of the deceased Jayshree indicates that conduct of the respondents was of such a nature that it was likely to drive the deceased to commit suicide and as the respondents had subjected the deceased to cruelty, they should have been convicted of the offence punishable under section 498-A of I.P.C. Learned Counsel emphasised that but for cruelty to which the deceased was subjected, there was no other reason which would have driven the deceased to commit suicide with her son of tender age and, therefore, the prosecution case ought to have been accepted by the learned Judge. What was claimed was that oral dying declaration made by deceased Jayshreeben regarding cruelty meted out to her

by respondent no.2, who was her father-in-law, is believable as well as acceptable and, therefore, the same ought to have been acted upon for the purpose of convicting at least respondent no.2. The learned Counsel for the appellant stressed that reliable and cogent evidence is led by the prosecution to establish that the deceased was not only subjected to cruelty by the respondents, but they had also abetted commission of suicide by her with her son of tender age and, therefore, appeal should be accepted.

5. Mr. K.B.Anandjiwala, learned Counsel for the respondents pleaded that Mansukhlal Gordhandas who is father of deceased Jayshreeben has not supported the prosecution at all and was declared hostile and as evidence on record does not establish that deceased Jayshreeben was subjected to cruelty by any of the respondents, the well-founded acquittal of the respondents of the offence punishable under section 498(A) of I.P.C. should be upheld by the Court. It was contended that medical papers on record show that the deceased was admitted in emergency ward at 12.30 P.M., but she was not able to speak nor was feeling any pain and as she had received Ist, IInd & IIIrd degree burns, it was not possible for her to make any statement before anyone, as a result of which, so-called oral dying declaration made by the deceased before Dr. Meenaben should not be accepted by the Court. Learned Counsel emphasised that prescription and the medical bills produced by the respondent no.1 probablise the defence that the deceased had committed suicide, as she was suffering from epilepsy and, therefore, appeal filed by the State Government should be rejected, more particularly when two views of the matter are possible.

6. We have been taken through the entire evidence on record by the learned Counsel for the appellant. The evidence of Mansukhlal Gordhandas who is father of deceased Jayshreeben, does not indicate in any manner that the deceased was subjected to cruelty by any of the respondents. Though it was claimed by him in his evidence that respondent no.1 had beaten deceased Jayshreebenand and, therefore, Jayshreeben had gone to the house of Nanalal, who is his brother-in-law and when Jayshreeben attempted to return to her matrimonial home, she was beaten and prevented by respondent no.1 from entering the house, he has admitted that he had not made any such statement before police when his statement was recorded during the course of investigation of the case. In examination-in-chief, this witness was confronted with the letter alleged to have been written by the deceased

and which was not posted, but the witness stated before Court that the writings of the letter were not of his daughter. In his cross-examination, he claimed that he had stated before police that the letter was written by his daughter because contents of the letter were read over to him by the police and, therefore, he believed that the said letter must have been written by his daughter. Again, in cross-examination the witness has stated that he had not mentioned in his statement before the police that Jayshreeben was subjected to beating by respondent no.1. This witness was declared hostile, but he denied suggestion made by the learned A.P.P. that he was deposing before the Court to favour respondent no.1. Reading of evidence of witness Mansukhlal makes it clear that prosecution has not led any reliable evidence to establish that deceased Jayshreeben was subjected to cruelty by any of the respondents. The postcard which is produced on record of the case at Exh.30 also does not indicate in any manner that the deceased was subjected to any cruelty by any of the respondents. A reasonable reading of the said postcard makes it evident that the deceased was not happy and wanted to have rest at her parents' house. On the totality of the facts and circumstances of the case, we are of the view that the learned Judge was justified in coming to the conclusion that offence punishable under section 498(A) of I.P.C. was not made out against any of the respondents.

7. Dr. Meenaben Maheshbhai Parekh, who was examined at Exh.11, has claimed that at 12.35 P.M. Jayshreeben was conscious and had stated history to the effect that she had attempted to commit suicide because of cruelty meted out to her by her father-in-law. The medical papers which are on record of the case indicate that the deceased was admitted to emergency ward of S.S.G.Hospital at 12.30 P.M. and the doctor who was on duty had made an endorsement that at that time patient was not talking and had sustained deep Ist to IIIrd degree burns all over body including face, hair, genital, palms and soles. It is further noted in the medical papers that the deceased was gasping for air and oral cavity of the patient was also charred. The important thing which was noted by the medical officer on duty was that there was no response to pain. In view of poor condition in which the deceased was admitted to hospital, the claim advanced by Dr. Meenaben that deceased Jayshreeben was conscious and had narrated to her history of the incident, becomes doubtful. The medical papers also indicate that fortwin injection was administered to the deceased intravenous and as it contains sedative drug, she would not have been in senses to make any statement before anyone. The

medical papers clearly establish that right from the time of admission in the hospital, condition of deceased Jayshreeben was deteriorating with passage of time and at about 1.00 P.M. she had gone into complete comma. Having regard to the nature of burn injuries sustained by the deceased and the treatment which was given to her at the S.S.G. Hospital, we are of the opinion that the view taken by the learned Judge that the deceased was not in a position to make any statement appears to be probable and acceptable.

8. Moreover, according to Dr. Meenaben, Jayshreeben had stated to her that she had attempted to commit suicide because of cruelty meted out to her by her father-in-law. However, this was never told by Dr. Meenaben to the Head Constable who was present when the deceased was being treated at the hospital. No attempt was made to get statement of deceased recorded by Executive Magistrate at all. Lakabhai Vechatbhai, who was duty head constable at the hospital, was examined at Exh.22. He has claimed that he had noted down the information given by Dr. Meenaben in a register and conveyed necessary information to P.S.O. of Sayajiganj Police Station. The information noted down as conveyed by Dr. Meenaben and the information conveyed by head constable to P.S.O. of Sayajiganj Police Station are produced at Exhs. 23 & 25 respectively. In Exhs. 23 & 25, it is clearly mentioned that as the deceased was fed-up with the cruelty to which she was subjected by her husband and father-in-law, she had attempted to commit suicide. It is not the prosecution case that information conveyed by Dr.Meenaben was noted down by Head Constable Lakhabhai incorrectly. Dr. Meenaben has not stated in her evidence that the deceased had made any complaint regarding cruelty meted out to her by her husband. Thus, the so-called dying declaration as mentioned by Dr. Meenaben in her evidence before Court stands completely contradicted with earlier version given by her to duty head constable and is not consistent at all. The postmortem notes of the deceased indicate that the deceased had.J

over the body and even trachea was congested. It means that it would not have been possible for the deceased to speak. On overall view of the matter, conclusion drawn by the learned Judge that the deceased was not in a position to make any statement appears to be reasonable and, therefore, respondent no.2, who is father-in-law of the deceased cannot be convicted on the basis of so-called dying declaration made by the deceased before the doctor. Thus, the evidence on record does not prove

that deceased Jayshreeben was subjected to cruelty by any of the respondents or any of the respondents had abetted commission of suicide by her.

9. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in our view, expression of general agreement with the view taken by the learned Judge would be sufficent in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince us to take the view contrary to the one already taken by the learned Judge and therefore, the appeal is liable to be rejected.

For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

******

(patel)